

**MINUTES OF THE MEEETING
OF THE BOARD OF DIRECTORS OF
THE DEPARTMENT OF WATERWORKS**

Date: August 28, 2003

The Board of Directors (the “Board”) of the Department of Waterworks (the “Department”) met at 200 East Washington Street, Indianapolis, Indiana in Room 107 of the City-County Building. The following Board members were in attendance: Samuel L. Odle, John Mutz, S. Michael Hudson, Jack Bayt and Barbara Howard.

Chairperson Odle announced that because some Board members must leave the meeting prior to its conclusion, the agenda would be addressed in inverse order starting with the last resolution listed on the agenda and ending with the approval of the minutes of last month’s meeting and also the approval of executive session of July 31st.

Chairperson Odle announced that Kobi Wright wants to make a few comments before we deal with resolution 16 & 17.

Counsel to the Board Kobi Wright regarding Resolution No. 16 deals with the middle of proposed approval by the Board of Directors to dispose of certain real estate located at 15th & 16th Street and Martin Luther King Jr. Drive there are three mechanism under the state by witch you can choose to dispose of real estate if you choose to do so 1.) via public bid 2.) via disposing of the property to an adjacent landowner to the subject real estate who has exhibited the highest and best use for the subject property or 3.) dispose of the property via negotiations with landowner that is going to facilitate an economic viable and compatible land use for the area. The question is before you today is BRS, LP which is general partners primary Dr. Kory Servaas, the attorney on behalf of BRS, LP is here today and he could brief you his interest into the property. I would want to make clear that what the resolution really presents is the question of whether or not the Board choices to dispose of the property as opposed to actually approving any terms of sale that would be a subsequent Board meeting once the sale is constimated or presented to you for approval but this is actually a decision on your part or whether or not your going to dispose of the property or how your going to dispose of the property.

**I. Resolution No. 17, 2003- Approval of Disposal of Certain Real Estate
Located at 1201 Waterway Boulevard**

Chairperson Odle I think there is somebody here who is knowledgeable about the property.

John Mean, Esq. about the Waterway Blvd property not Martin Luther King Jr. property I’m not sure if your familiar with this property it’s an abandoned railway, it’s off of Waterway Boulevard and access the Waterway property and beyond there, there’s no more railroad tracks anymore it’s about 1600 of an acre I believe it is longer than it is

wide, we believe that the highest and best use would be to connect it with the adjoining land owner return BRS to make use of the alley to better access the property. This is a slice of land between to buildings it should be adjoined to one of the two buildings and we are the ones interested in it's highest and best use is really to attach it to the adjoining landowner and put back on tax rolls.

Counsel Kobi Wright response, Mr. Mean is correct I brought him up to talk about Resolution 17 instead of 16 because I don't see the actual attorney's present for Resolution 16 they are two separate pieces of property.

Chairperson Odle you mentioned the property goes between two buildings, is your client the owner of both?

Mean, Esq. I don't believe so, I know for certain that we are the owner of the building on the westside of us.

Board member Bayt is the property not a tax roll know?

Counsel Kobi Wright one other matter 1201 Waterway Boulevard property in reference to Resolution 17 the appraisal that we had obtained earlier on this matter according to those appraisals for example Michael Lady stated that the best and highest use of the land and this is for 1201 Waterway Boulevard is for similar access or expansion for neighboring property owner Will Stump and Associates stated that the best and highest use of the land is to the adjacent land owner is to support the adjacent landowner with additional parking or access between the two adjacent and existing buildings so that's something that could help you decision.

Board member Hudson what are the imprecations relative to the environment impact, environmental liability that go with that property if it's been a railroad tract anything to worry about?

Counsel Kobi Wright once we transfer to the buyer that's what I would propose if we actually choice to dispose of the property and we enter into an negotiation I would propose that the Board pass along all and any liability that there are and have to assume which would be standard in ordinary court for the regular business transaction, I should also point out the Resolution states that the Department of Waterworks has been in contract with USFilter that there is no use for this property for the liability.

Board member Mutz Mr. Chairman I move approval of the Resolution.

Counsel Kobi Wright I think the question before us is which way you would choice to dispose.

Board member Hudson what are the cost implications of these three methods I've never done this before.

Counsel Kobi Wright all of these methods would involve obtained appraisals, however the difference here is that for example by 1) bid that would work through the Purchasing Division of the Controller's Office it would have to be done within 60 days of this date if you choose to dispose of the property that's on option 2) if you did it by negotiations to facilitate the kind of land use plan it would just be a matter of entering into negotiations with whomever the proposed buyer that fit that criteria and enter into proposed agreement that would of course have to be approved by the Board or amended if the Board choice to do so. 3) the disposition to be adjacent landowner as the best highest use landowner for the property so you have three different versions.

Board member Mutz my question is what does that recommended I really haven't looked at this piece of property so I don't have a good way to tell.

Curry this piece of property seems to me that the discussion have gone pretty far with above landowner it's a .16 acre it already has an easement that Board has granted as to I.U.P.U.I. for both that goes up to the Life Science Building just South of 16th Street it seems to me if you look at the layout of the two buildings, one which is owned by BRS, LLC and another party that clearly has no benefit in terms of the adjoining or budding landowner would be BRS, LLC and if we were to go to a bid process we have the computer situation that the expense of the two appraisals almost approximated the value of the land, I think we would be better off on a direct negotiation here than going to a bid, fair market value for this .16 acre going to be very close to the original appraisal and I think we can do better than that in direct negotiations, option three is the one that I would pick.

Board member Mutz is it conceivable that we could get a return of the money that we spent on the appraisal?

Curry yes, but I can't speak for his client, but I have a feeling that there would be a lovely reach middle ground.

Chairperson Odle the easement would transfer so, we would be putting I.U.P.U.I. in the middle?

Counsel Kobi Wright that is a matter of record.

Chairperson Odle is there any disadvantage to the other a budding landowner by negotiating or conveying the property to this landowner.

Curry in my judgement this is has not been a very public endeavor and the adjacent property owner has not contacted in 4 month that this has been before the Board.

Counsel Kobi Wright at some point in time there was two individuals that had approached Mr. Curry who inquired about the property.

Curry two private individuals who approached about two months ago asking if they might bid on the property at that time they were unaware their had been easements granted however and since that time their has been no further contact by those individuals.

Chairperson Odle do you know what use they intended?

Curry no, I think they wanted to buy this little piece of land because of an entry route thinking that would be a really nice thing to sale into an easement and make a nice return on the investment, but I don't know that.

Chairperson Odle I guess the condition of the negotiation would be that we would get the value of the land and whatever expenses that we have incurred. I think what staff is recommending is that we use the approach of disposal of the budding landowner as the highest and best use of the property.

Vote 5-0 (yes)

Mean, Esq. I apologize for having mistaken earlier about the property not being on the tax roll so it was may understanding that it wasn't so I didn't mean to mislead this Board.

Counsel Kobi Wright he is technically correct we are taking payments in lieu of taxes in order to calculate those we have an understanding with the Assessor to keep it on the rolls, but as a pilot payment but not as an actual tax payment.

II. Resolution No. 16, 2003-Approval of Disposal of Certain Real Estate Located at Southwest Corners of 15th and 16th Street and Martin Luther King Jr. Drive

Chairman Odle Resolution No. 16 which is the property on Martin Luther King Jr. Dr is their someone here representing the adjacent landowner for questioning that property?

Counsel Kobi Wright yes, there are actually two, one representative for Children Bureau of Indiana and also the Church of God.

Elizabeth Hobbs, Esq. I'm representing the Children's Bureau. The church and the Children's Bureau have been working jointly to seek a vacation of Northwestern Avenue and also a possibility of acquiring the land at Martin Luther King Jr. Dr. specifically for the Children's Bureau they are looking to doing an expansion of the Family Support Center that's located there currently the expansion within the next 18 to 24 months add additional parking for the additional services that would be provided with that expansion so that in the intended use and purpose for the additional property we would require.

Cameron Clark, Esq. Representing the Church of God are interested in this, came about when they wanted to add onto there building with full permits and it was determined that they were going to need variances to dig with the parking deficiencies at this site, it's an older building and it's been used in this matter for quite sometime, so they can't get

permits to add onto there building without dealing with some of the development standard issues of the ordinance are interest in this to vacate that portion across from there building to pave over what can be paved over to increase their parking to less the burden on their parking situation as to what I is now and also make the variance petition more compatible to staff, because the way that it is currently stands staff couldn't support the variance petition that is currently on file because of the reduction of parking spaces they would be loosing about 25 to 30 percent of their existing parking if they were able to put that on.

Counsel Kobi Wright when he says staff I believe he is referring to the Board of Zoning Appeals?

Cameron Clark, Esq. Yes, we have variance petition on file with Metropolitan Development Commission (BZA) right know it's in limbo until we can make the determination as to whether or not will be able to add to our request whether to vacation the petition but as you know the street has a vacated property owner on both sides of the vacated area have a right to that area as being vacated so obviously if they were able to acquire the property across the street they would on both sides of Northwestern be able to take title to it.

Board member Hudson is Northwestern closed through here

Chairperson Odle yes, it's a dead end

Elizabeth Hobbs, Esq. A bridge on the eastern side

Board member Hudson and we have come to own that property because a canal goes under it?

Cameron Clark, Esq. Al this point it's a dry canal

Curry the water company canal at one time had water in it through this area and the canal was blocked to White Water Treatment Plant and this has been filled in so there is no canal under this or water and this is residual property then that they State divided u with the City and then NiSource to us

Board Member Mutz where did the water go?

Curry well it goes into the treatment plant and further south then us you have a canal that we think is the water company canal it's not, it belongs to the Department of Public Works and has a different water system

Board Member Mutz I didn't realize that

Board Member Hudson so this is a dominant piece of property that became owned by the watery company because of the canal being there before time?

Curry yes, that's a good part of the story

Board Member Hudson are their other functions that go on at that area that we should be concerned about?

Curry we have a water main that goes in front of the Children's Bureau and the West of East Street their would be an easement lane to allow are maintenance of that main that would have to run with the land

Chairperson Odle when we sale it, we transfer with a easement that will make sure that are main couldn't build a building on top of are main

Curry yes, that's right

Board member Mutz what recommendation are you concerning the method used

Counsel Kobi Wright I would recommend that you move forward, no other proposed on Northwestern and Martin Luther King Jr. Dr. property so that would leave you to dispose of it negotiation of compatible land use or to an adjacent landowner someone could make the argument that they are not technically against landowners. I would recommended to negotiate facilitate compatible land use plan which could include the price of the appraisal that the Board would have to obtain

Chairperson Odle asked if staff recommending disposal to the highest and best use of the real property and will use negotiate with them and any transfer will include the real value of the property plus any expenses that we incur in the transfer

Counsel Kobi Wright member of the public to speak

Clark Kahlo asked the Board to I would urge this Board to resist parceling off the property to this water utility unless you really need to, I don't know if you got a comprehensive plan in terms of the property that you have, thing's seem unsettled in the Waterworks these days and I'm very concerned about selling piece by piece parcels of the utility for whatever purpose not-for-profit, for profit, I'm not sure who these participants are it makes me very leery one year into are existence to begin entertaining into a non competitive situation that no one else is aware of the availability of these properties it gives no one else an opportunity to express an interest

Elizabeth Hobbs, Esq. I don't know if there is much of a market for are particular Resolution?

Clarke Kahlo how do you know we haven't tested the market, my request is that not vote to dispose of these pieces, USFilter has commented on both of these proposals and express they are of no further use of utility, there is nothing in writing about it, no documentation for the public to look at

Counsel Kobi Wright stated that these parcels were published in the local newspaper pursuant to the state statute

Chairperson Odle he asked we have disguised them here before to

Board Member Mutz he stated the disposition of exit real estate by utility is standard activity, it goes on all of the time with my experience with previous utilities they have so much of this land, when you have public use, which you have in both of these cases, I can assure to you that more attention has been paid to these two transactions than any utility would, I'm not suggesting that we should operate like those other utilities but I believe this has received a lot of public attention also Resolution 17 has been wrote about in our local new paper

Clark Kahlo stated one of these parcels was proposed for disposition question about it's value and what it's appraised value was and what it cost for us to appraise it that's what makes me nervous when these proposals were brought to the Board for execution and with a little bite of inquiry and a few questions by one or two Board members it all of sudden seems a parent that the due diligence is not their

Board member Bayt stated I have been by this site several times, I've looked at and read about and inquired about it so what you just heard today here is not the in depth of the reach that's been done by the people on this Board I think your discounting that

Board Member Mutz stated we have taken a process here which will reimburse the owners of the water company the rate payers not only for the fair market value of that property, but also for those other additional expenses that we were concerned about when we have the report and their maybe other expenses and these parties have indicated their willingness to enter into a good faith negotiations and that would be brought back to this Board and if would have a unsatisfactory outcome we could still turn it down. I share your concern about unwarranted disposition about property that has value that belongs to the public but I think in this case I thing we are taking the right kind of procedures that protect the public

Clark Kahlo stated in previous Mayoral Administrations to section of pieces of Greenways along the river bank, makes me very leery

Chairperson Odle stated anymore commitments from the public the commitments are good I think we have heard them before, we've had are staff re-examine the process and I think they've done a good job of doing that, these properties don't have water on it it's not primary o our business and there are other public uses that would benefit from it, so if were prepared to vote

Counsel Kobi Wright stated my recommendation is to dispose of it by negotiation to facilitate compatible land use plan

Chairperson Odle asked for vote of 5-0 Resolution 17 is recommended by staff, I'm sorry it was Resolution 16

III. Resolution No. 18, 2003- Approval of Certain Capital Projects

Board Member Hudson stated can you give us brief summary of one who running considerably higher

USFilter Dieterlen stated we make an estimate at when we put the budget together and previous years we make an estimate of the Capital Works Projects that are facilitate are impacted Department of Public Works, DOT other entities that ask for relocation or have projects that are on going we make are best estimate as to what their plans are those estimates sometimes get revised through the year as projects are excellerated or delayed that's why we are impacted by that and that's why the budgets are different there are more projects that are or have been excellerated up to, to increase the amount is needed

Board Member Hudson stated the cost of the project themselves are running about what you thought the productivity

USFilter Dieterlen state yes, these are re-active projects where someone has said we have a problem here w have a waterline that is in the way that we need to have moved, productivity is where we want it to be but there is more people out their requesting the movement of the facility from the right away

Curry stated Mr. Hudson we are not always the one that has to move are facility sometimes those people have to move theirs

Board Member Hudson stated is their a lot of additional buildings going on in Central Indiana region, should we anticipate increase cost in this area in the future?

Curry I don't know, each year we set up an allowance as best we can, it doesn't take to much for a relocation to cost couple hundred thousand dollars

Board Member Howard stated is this is out of Budget?

Curry no, it's out of the estimate

Board Member Bayt stated is this to update the system or accommodate other people that we have vacate right of way for?

USFilter Dierterlen stated he is right, accommodation but in the process of doing that you take the opportunity in making improvements if that's the case

Chairperson Odle stated the main extension is \$550,000 and the park improvements \$100,000 and filter upgrade White River Purification upgrade \$582,000 that's a new project a \$550,000 is an increase as to what we had estimated

Chairperson Odle approval of Resolution 18 – Approval of Certain Capital Projects
Vote 5-0

IV. Report of the Directors of Contracts and Operations of the Department – Carlton

Chairperson Odle stated running a main won't solve that, they don't have the water turned on what about the areas where were not pumping water close enough where they can tap into it

Board Member Beulah Coughenour enters the meeting

Board Member Mutz stated 2004 Capital Category, 56.4 which we call growth is that increased consumption on water, investments in certain funds or is it the hooking up of additional customers

Curry their really is no revenue today, it provides water from well fields to increase are ability to treat and then sale

Board Member Hudson stated this analysis does include projected 3%

Curry the revenue stream has 2%

Board Member Mutz stated that 2% is based on additional customers

Curry yes, additional water sales of 2% and increase dollar revenue

Chairperson Odle stated increase consumption and increase customer

Board Member Mutz stated as you add customers the cost of adding a customer is substantially greater than your ability to re-cop the cost of adding the customer, it would be helpful to me if we new what the arithmetic was, I know that if very's in this analysis, is it possible

Curry stated yes, it is

Chairperson Odle stated the financial projection that having a net cash of \$15 million a year, does that change if we have to serve? If this freeze are rate increase if the Water Company without that commitment we would just calculate the cost expanding and improving and we build it into are rates. But we can't do that for at least 4 years it's just a matter of come up with the cash flow and eventually we'll have to go into a rate increase

Board Member Mutz stated the course we are on puts us in a position to limit the amount of water usage

Board Member Barbara Howard leaves the meeting

Counsel Kobi Wright states Bond Bank anticipated what we didn't anticipate was 80 million

Approved this 25th day of September 2003.

Samuel L. Odle, Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer